DAVID N. KELLEY
United States Attorney for the
Southern District of New York
By: ELIZABETH WOLSTEIN (EW-5194)
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2743
Facsimile: (212) 637-2686

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, Plaintiff, - v.- UNITED STATES DEPARTMENT OF DEFENSE, Defendant.	**ECF CASE** DECLARATION OF KAREN L. HECKER 05 Civ. 3941 (JSR)

KAREN L. HECKER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

Associated Press v. United States Department of Defense Doc. 12

1. I am an Associate Deputy General Counsel in the Office of General Counsel of the United States Department of Defense ("DOD"). In that capacity, I am responsible for, among other things, overseeing litigation involving the DOD. I am familiar with plaintiff's November 4, 2004 Freedom of Information Act (FOIA) request that is the subject of this action, and with the documents produced by the DOD in response to that request. Unless otherwise indicated, the statements in this declaration are based upon my personal knowledge and information obtained by me in the course of my official duties.

2. The purpose of this declaration is (i) to describe the nature of the information withheld from production in this case and the basis for that withholding under Exemption 6 of the Freedom of Information Act, 5 U.S.C. § 552(b)(6), and (ii) to place before the Court certain

documents referred to in DOD's memorandum of law in support of its motion for summary judgment.

The Documents Produced in Response to Plaintiff's FOIA Request

3. DOD has produced more than 3,900 pages of documents in response to plaintiff's November 4, 2004 FOIA request. No documents were withheld from production based on any FOIA exemption. However, selected identifying information has been redacted from the documents that have been produced, pursuant to FOIA Exemption 6, as described further in paragraphs 6 - 8, below.

4. The vast majority of the produced documents consists of transcripts of detainee testimony before the Combatant Status Review Tribunals (CSRTs), the material requested in the first category of plaintiff's FOIA request. The transcripts reflect the detainee's statements to the Tribunal; questions from Tribunal members and the detainee's answers; questions by the detainee's Personal Representative and the detainee's answers; and the testimony of any other detainees who appeared as witnesses. The transcripts also reflect DOD's presentation to the detainee of the factual bases for his classification as an enemy combatant. The transcripts paint a detailed picture of the detainee's life before he was captured, revealing, among other information, his profession, work history, family ties, travel and experiences abroad, military training, and involvement with individuals or groups the United States considers terrorists, terrorist organizations, or groups that have some relationship to such individuals or groups. Four sample transcripts are attached as Exhibit A to this Declaration.

5. A relatively small number of the produced documents consists of detainees' written statements submitted to the CSRTs (sometimes dictated to the detainee's Personal Representative), the second category of documents requested in plaintiff's FOIA request. Two

examples are attached as Exhibit B to this Declaration. A similarly small number of produced documents consists of documents provided by the detainee to his personal representative, the third category of documents requested in plaintiff's FOIA request. These typically consist of correspondence from the detainee's family members and legal documents in the detainee's possession. Three samples of documents provided by detainees to their personal representatives are attached as Exhibit C to this Declaration.

The Information Withheld

6. The redacted information falls into six general categories: (i) internment serial numbers, or "ISNs," which are described in the next paragraph; (ii) names and home locales of the detainees and their families; (iii) names of persons identified by detainees in the course of their testimony, or mentioned in detainee statements or documents (other than public figures, such as, for example, Hamid Karzai); (iv) identities of witnesses before the CSRTs; (v) nationalities or countries of origin of the detainees, and information sufficient to reveal their nationalities or countries of origin, such as, for example, the country a detainee departed at a certain point in time, where that information would reveal that the departed county was the detainee's country of origin; and (vi) miscellaneous personal information which, together with other information, could be used to identify the detainee or witness, such as, for example: his tribal affiliation, native language, where the detainee was captured, his age, the college he attended, and the ages of his children.[1] In one transcript, Bates-stamped AP 02856-2879, the

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[1] Some of the detainees have filed habeas cases in the District Court for the District of Columbia. In those cases, the government has publicly filed factual returns that include the CSRT transcript and other documents pertaining to that detainee. Pursuant to a protective order governing the habeas cases, the government redacts certain identifying information from the documents before filing them with the court, including ISNs and names of detainee family members, but not the name and nationality of the detainee who is the habeas petitioner. That is because DOD considers the detainee to have voluntarily revealed his name and nationality by filing the habeas petition. For those detainees who are also habeas petitioners, DOD provided

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detainee's mention of a physical problem of an intimate nature was redacted from page AP 02857, also under Exemption 6. Names of military officials who served as Tribunal Presidents also have been redacted but those redactions are not challenged by plaintiff.

7. The ISN is an identifying number unique to the detainee, analogous to a social security number. A full ISN is a 12-digit alpha numeric identifier that incorporates certain abbreviated information about the detainee, such as the country where he was captured and his suspected nationality. DOD also uses shortened ISNs consisting of three, four or five digits to identify detainees. The shortened ISNs are still unique to the detainee. It is the shortened ISNs that were redacted from the produced transcripts.

8. Five examples of transcripts in which information reflecting the detainee's nationality or country of origin has been redacted (category (v) in paragraph 6) are attached as Exhibit D to this Declaration. Five examples of transcripts in which miscellaneous personal information has been redacted (category (vi) in paragraph 6) are attached as Exhibit E to this Declaration.

The Basis for the Redactions Under FOIA Exemption 6

9. DOD is concerned about the consequences to the detainees and their families of disclosing identifying information that links particular detainees to the detailed personal stories revealed in the transcripts. If the detainee's identity is connected to his testimony, and terrorist groups or other individuals abroad are displeased by something the detainee said to the Tribunal, DOD believes that this could put his family at serious risk of reprisals – including death or

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AP with CSRT transcripts in the form in which they were publicly filed in the habeas cases. Accordingly, some of the transcripts produced to plaintiff do reveal the detainee's name and nationality.

serious harm – at home. This risk also translates to the detainee himself when he is released from detention. (To date, 234 detainees have left Guantanamo for their home countries with approximately 105 leaving after the CSRT process had begun. CSRT transcripts exist for some of these detainees. These departures will be continuing into the future and transcripts also exist for many of those detainees.) Furthermore, these consequences also exist for the detainees who remain at Guantanamo. Now that these documents are in the public domain, it is possible that habeas counsel for the detainees could provide some of these transcripts to their clients at Guantanamo, in the course of their representation of the detainees. (Approximately 210 Guantanamo detainees currently have habeas cases pending and that number increases each week.) The transcripts reveal that some of the detainees have provided incriminating information on other detainees. Being positively identified to fellow detainees in this manner could create a grave risk to their safety.

10. Even if the detainee's name is redacted, other identifying information about him revealed in his transcript – such as his nationality, tribal affiliation, native language, age, or the names of his associates or contacts abroad – could be pieced together with other publicly available, or privately known, information about him to connect the particular detainee to his statements before the CSRT. The more of these personal details are released about a particular detainee, the more likely it is that knowledgeable persons (or those who are merely curious) will be able to identify the detainee with his testimony or written statements to the Tribunal.

11. There is a large amount of information on Guantanamo detainees readily accessible on the internet. The Washington Post, for example, has published a list of the purported names and nationalities of detainees held at Guantanamo, which appears on its website. A true copy of the Washington Post's list, retrieved from the newspaper's website, is attached as Exhibit F to this Declaration. Another private website, cageprisoners.com, describes

itself as containing the "most comprehensive detainee list on the web," and also contains a list of purported detainees at Guantanamo and their nationalities. Excerpts from cageprisoners.com, retrieved from that website, are attached as Exhibit G to this Declaration. The Washington Post's publication alone identifies other public sources of information on detainee identities, including an Arabic language website, a Pakistani newspaper report, a publication of the Yemeni government, and al Qaeda source in Afghanistan, as well as numerous general sources of information about detainees, including "media reports," "Arabic websites," and "legal documents." Exhibit F hereto, at 1. Cageprisoners.com contains photographs and profiles of purported detainees, excerpts of which are attached as Exhibit H to this Declaration.

12. Apart from public websites, DOD also believes that detainees' associates abroad are well aware that they are or were in United States custody, and could connect a particular detainee to his CSRT testimony the more personal details in that testimony are made public. Redaction of identifying information about a detainee from his testimony and statements before the CSRT is meant to minimize the ability of knowledgeable persons here and abroad to connect a particular detainee to the evidence he provided to the CSRTs, thereby protecting the detainee and his family members from potential reprisals. (The DOD does not publicly disclose the identities of those detainees who have left Guantanamo, in part to protect the detainees from reprisals in their home countries.) At the same time, because the content of the transcripts and other evidence submitted to the CSRTs has been disclosed, the public has the ability to scrutinize DOD's performance of its duties in conducting the CSRTs based on DOD's release of the

redacted documents. Disclosure of detainee identifying information does not shed any additional light on how DOD performed those duties.

Documents Referred to in DOD's Memorandum of Law

13. Attached hereto as Exhibit I is a true copy of a Memorandum from the Secretary of the Navy, dated July 29, 2004, regarding Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants detained at Guantanamo Bay Naval Base, Cuba.

14. Attached hereto as Exhibit J is a true copy of an Order of the Deputy Secretary of Defense, dated July 7, 2004, Establishing Combatant Status Review Tribunals.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2005.

Karen L. Hecker

Karen L. Hecker